

TERRY PEACH 4/10/2009

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in)
his capacity as ATTORNEY)
GENERAL OF THE STATE OF)
OKLAHOMA and OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT in his)
capacity as the TRUSTEE FOR)
NATURAL RESOURCES FOR THE)
STATE OF OKLAHOMA,)

Plaintiff,)

vs.) No. 05-CV-00329-GKF-PJC

TYSON FOODS, INC, et al.,)

Defendants.)

VIDEOTAPED DEPOSITION OF TERRY PEACH,
before the undersigned Certified Shorthand Reporter,
taken on behalf of the Defendants, at the Attorney
General, 313 Northeast 21st Street, Oklahoma City,
Oklahoma, commencing at 9:06 a.m., on April 10, 2009,
pursuant to the stipulations of the parties.

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A P P E A R A N C E S

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12 VIDEOGRAPHER:

13 MR. DAVID FARLEY
14 BALLARD VIDEO PRODUCTIONS, INC.

15
16 S T I P U L A T I O N S

17 It is hereby stipulated and agreed by and among
18 the parties hereto that the deposition is being taken
19 pursuant to agreement of the parties.

20 It is further stipulated by and among the parties
21 hereto that all objections, except as to the form of
22 the question, are to be reserved until the time of
23 trial.
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TRANSCRIPT OF PROCEEDINGS

VIDEOGRAPHER: We're on the record.

TERRY PEACH,

after having been duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. SANDERS:

Q. Mr. Peach, my name is Bob Sanders. I represent the Cal-Maine Defendants in this lawsuit, and I'm going to be the first one to ask you questions this morning. Will you tell us your name and what you do for a living, please.

A. Yes. Terry Peach and I'm the Oklahoma Secretary and Commissioner of Agriculture.

Q. Can you tell me just briefly what your work background is?

A. Yes, sir. I attended school at Oklahoma State University. From there went to teach vocational agriculture in Oklahoma Public School system. Moved back to Northwest Oklahoma and our family farm and ranching operation. Worked there in the oil field business until about 1993. Served from '93 to 2000 as the FSA State Director for USDA. Went back to the farm and ranch for two years and then

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1 **Q.** All right. Now, if you would, turn over
2 to the -- to the very next page. And in the second
3 column towards the top there's a heading that says
4 "organic nutrient application rates." Do you see
5 that?

6 **A.** Yes, sir.

7 **Q.** And do you know if chicken litter is
8 considered an organic fertilizer?

9 MR. HAMMONS: Object to the form.

10 **A.** Yes, I believe that it is.

11 **Q.** (By Mr. Sanders) All right. Then below
12 that you'll see two headings for nitrogen application
13 and phosphorus application. Do you see that?

14 **A.** Yes, sir.

15 **Q.** And the first one for nitrogen application
16 says the amount of nitrogen applied for manure will
17 not exceed the animal -- the annual crop requirement
18 for nitrogen. Do you see that?

19 **A.** Yes, sir.

20 **Q.** All right. And down below that's for the
21 phosphorus application it says that the maximum
22 planned rates of phosphorus application shall be
23 determined using the Oklahoma phosphorus worksheet.
24 Do you see that?

25 **A.** Yes, sir.

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1 in that; is that correct?

2 A. Yes.

3 Q. Let me ask you about the Oklahoma
4 Conservation Commission. Are you -- are you aware
5 that the state of Oklahoma pays people through the
6 Oklahoma Conservation Commission to teach people how
7 to use litter, how to apply litter and use litter in
8 the IRW?

9 A. Yes, sir.

10 MR. HAMMONS: Object to the form.

11 Q. (By Mr. Sanders) Is it odd to you that
12 the state of Oklahoma on the one hand pays employees
13 to teach people how to use litter in the IRW and on
14 the other hand the state of Oklahoma is suing to
15 prevent the use of litter in the IRW?

16 MR. HAMMONS: Object to the form.

17 Q. (By Mr. Sanders) Does that seem odd to
18 you?

19 A. Yes, sir.

20 Q. You know also that there are point sources
21 of nutrients and bacteria for that matter in the IRW;
22 is that correct?

23 A. Restate the question.

24 Q. Do you understand that there are point
25 sources that -- like municipal wastewater treatment

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1 plants that have pipes that go directly to the waters
2 of the Illinois River watershed?

3 A. I understand that there are possible other
4 sources, yes. Not that they are a source.

5 Q. Okay. All right. But those other point
6 sources?

7 A. Yes.

8 Q. And do you understand that those point
9 sources contribute the nutrients and bacteria 365
10 days of the year?

11 MR. HAMMONS: Object to the form.

12 A. Yes, sir.

13 Q. (By Mr. Sanders) All right. And do you
14 understand that those -- the nutrients and the
15 bacteria from those point sources occur whether it's
16 a low flow condition in the river or a high flow
17 condition?

18 A. Yes, sir.

19 Q. And in low flow conditions all of that
20 matter doesn't get washed down to Lake Tenkiller
21 right away, does it?

22 MR. HAMMONS: Object to the form.

23 Q. (By Mr. Sanders) Because the river -- the
24 flow in the creeks and river are low.

25 A. I can't speak to the flow of rivers and

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1 MR. HAMMONS: Object to the form.

2 A. Yes.

3 Q. (By Mr. Sanders) Do you know if the
4 Attorney General or any other state prosecutor has
5 ever prosecuted anyone for applying litter in the
6 IRW?

7 A. I can't answer -- I don't know the answer.

8 Q. Just to your knowledge.

9 A. I don't know the answer to that question,
10 no.

11 Q. But you don't know?

12 A. Not to my knowledge.

13 Q. When did you learn that you were on the
14 State's witness list in this case?

15 A. I guess about two weeks ago.

16 Q. All right. Who told you?

17 A. Larry Harden.

18 Q. Has anybody talked to you about your
19 expected testimony?

20 A. No.

21 Q. Have you seen any sort of outline of what
22 you might be expected to testify about?

23 A. Not at all, no.

24 Q. If you are called to testify, you'll
25 testify -- well, will you testify that ODAFF has

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1 jurisdiction over all aspects of the management and
2 disposal of waste from animal industry including the
3 environmental and esthetic impacts of such waste on
4 air, land or waters of the state?

5 **A.** Restate your question.

6 **MR. HAMMONS:** Object to the form.

7 **Q.** (By Mr. Sanders) And I'll represent to
8 you this goes back to Exhibit 1, the Attorney
9 General's opinion. If asked will you testify that
10 ODAFF has jurisdiction over all aspects of the
11 management and disposal of waste from animal
12 industry, including the environmental and esthetic
13 impacts of such waste on the air, land or waters of
14 the state?

15 **A.** Yes.

16 **MR. HAMMONS:** Object to the form.

17 **Q.** (By Mr. Sanders) And will you testify if
18 asked that ODAFF has jurisdiction over all point and
19 nonpoint agricultural pollution?

20 **MR. HAMMONS:** Object to the form.

21 **A.** Yes, sir.

22 **Q.** (By Mr. Sanders) And you will testify, if
23 asked, that ODAFF has the authority to stop litter
24 application in the IRW; is that correct?

25 **MR. HAMMONS:** Object to the form.

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1 **A.** Yes.

2 **Q.** (By Mr. Sanders) And if asked you will
3 testify that ODAFF does not believe it ought to be
4 stopped; is that correct?

5 MR. HAMMONS: Object to the form. Sorry.

6 **A.** Restate that.

7 **Q.** (By Mr. Sanders) If you are asked will
8 you testify that ODAFF does not believe that all
9 litter application in the IRW should be stopped?

10 MR. HAMMONS: Object to the form.

11 **A.** Yes.

12 **Q.** (By Mr. Sanders) And if asked you'll
13 testify that ODAFF has chosen not to stop litter
14 application in the IRW?

15 MR. HAMMONS: Object to the form.

16 **A.** Yes.

17 **Q.** (By Mr. Sanders) And if you are asked
18 you'll testify that litter application in the IRW is
19 legal when done in compliance with the requirements
20 of the Oklahoma Registered Poultry Feeding Act, the
21 individual's animal waste -- animal waste management
22 practice acts and Code 590?

23 MR. HAMMONS: Object to the form.

24 Compound question.

25 **Q.** (By Mr. Sanders) Let me ask you this. If

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1 you are asked, will you testify that litter
2 application in the IRW is legal when done in
3 compliance with state law and applicable state
4 regulations?

5 MR. HAMMONS: Object to the form.

6 **A.** Yes, sir.

7 **Q.** (By Mr. Sanders) And if asked you will
8 testify that ODAFF has never asked the Legislature to
9 ban litter usage in the IRW?

10 **A.** Yes, sir.

11 **Q.** And if asked you will testify that you're
12 not aware of any agency, either state or federal,
13 which has called for a litter ban in the IRW?

14 MR. HAMMONS: Object to the form.

15 **A.** Yes, sir. And again, I'd refer that to
16 Dan Parrish, the director of that division.

17 **Q.** (By Mr. Sanders) All right. But so far
18 as you know as you sit here now you would answer yes
19 to that?

20 **A.** Yes.

21 **Q.** And if asked you will testify that ODAFF
22 can convert a dry litter operation to a CAFO
23 operation if ODAFF determines that the operation is a
24 significant contributor of pollution to the waters of
25 the state?

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1 MR. HAMMONS: Object to the form.

2 A. Yes.

3 Q. (By Mr. Sanders) And so far as you know
4 ODAFF has never so converted a dry litter operation?

5 A. Under my leadership we have not.

6 Q. That's good. Thank you.

7 And if asked will you testify that ODAFF
8 does not impose an agronomic rate limits on the use
9 of organic phosphorus -- organic litter with regard
10 to phosphorus?

11 MR. HAMMONS: Object to the form.

12 A. That's correct.

13 Q. (By Mr. Sanders) And if asked will you
14 testify that you're not aware of any government
15 agency that has ever asked that an agronomic rate
16 limitation -- agronomic uptake rate limitation be
17 imposed?

18 MR. HAMMONS: Object to the form.

19 A. In Oklahoma in the --

20 Q. (By Mr. Sanders) In the IRW.

21 A. -- Illinois River watershed?

22 MR. HAMMONS: Object to the form.

23 A. You left it pretty open.

24 Q. (By Mr. Sanders) I'm sorry. You're
25 right. But that's correct?

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1 A. Yes.

2 Q. And if asked you'll testify that ODAFF
3 does not consider chicken litter to be a hazardous
4 substance?

5 A. Yes.

6 MR. HAMMONS: Object to the form.

7 Q. (By Mr. Sanders) And if asked you'll
8 testify that ODAFF does not consider that the
9 Illinois River watershed itself or pastures which
10 have received chicken litter or turkey litter should
11 be considered superfund sites?

12 MR. HAMMONS: Object to the form.

13 A. Yes, sir.

14 Q. (By Mr. Sanders) And if asked you'll
15 testify there are multiple sources of nonpoint
16 nutrient contributions?

17 A. I'll say that there are potential.

18 Q. Multiple potential sources?

19 A. Yes, sir.

20 Q. All right. And if asked you'll testify
21 that farmers in the IRW are generally -- generally
22 obey applicable statutes and regulations?

23 A. Yes, sir.

24 MR. HAMMONS: Object to the form.

25 Q. (By Mr. Sanders) And if asked you'll

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1 testify that the farmers in the IRW generally are
2 concerned with the environment?

3 **A.** Yes, sir.

4 **Q.** If asked you will testify that you are not
5 aware of any violation of any Oklahoma law or
6 regulation by any Defendant in this proceeding in the
7 IRW?

8 **MR. HAMMONS:** Object to the form. All
9 these have been asked and answered before.

10 **A.** Yes, I'm not aware of any. But again, you
11 need to ask Dan Parrish for that direct answer.

12 **MR. SANDERS:** All right. Because of the
13 time constraints that we have, I'm going to pass the
14 witness at this point. But if we reconvene, I do
15 have other questions I'd like to ask.

16 **MR. HAMMONS:** Okay.

17 **MS. TUCKER:** Do you need to take a break?

18 **A.** No, I'm fine. We're through with 6 and 2?

19 **CROSS-EXAMINATION**

20 **BY MS. TUCKER:**

21 **Q.** Secretary Peach, I'm K. C. Tucker, and I
22 represent -- oh, sorry. I represent the George's
23 Defendants in this matter. I think earlier you said
24 that you had either been on a phone call or in a
25 meeting with some of the State's retained experts in

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1 your farming practices and what crops you grow.

2 Q. Well, for example, you have wheat out
3 there. And after you cut your wheat crop what do you
4 do with it?

5 A. Work the ground.

6 Q. And that means you work in the organic
7 matter that's left over after the wheat's harvested?

8 A. Yes, sir.

9 Q. So that's giving back to the soil, isn't
10 it?

11 A. Yes, sir.

12 Q. And the same with your pasture, do you
13 burn your pasture every year?

14 A. No.

15 Q. Do you ever burn your pasture?

16 A. No.

17 Q. So the grass that doesn't come back the
18 next year and that which gets on the ground it
19 decomposes and that's giving back to the soil too,
20 isn't it?

21 A. Yes, sir.

22 Q. When you apply poultry litter you're not
23 just applying nitrogen and phosphorus and other major
24 nutrients, are you, sir?

25 A. No.

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1 **Q.** What else are you applying to your soil?

2 **A.** You're applying nutrients, humus and also
3 soil bacteria.

4 **Q.** Does chemical fertilizer do that for the
5 soil?

6 **A.** No, sir.

7 **Q.** Are those things that you're adding back
8 to the soil healthy for the soil?

9 MR. HAMMONS: Object to the form.

10 **A.** They're if you're careful with the amount
11 of ingredients that you apply back and you apply
12 those ingredients back based on soil analysis.

13 **Q.** (By Mr. Tucker) My grandfather was a
14 gentleman farmer, or so he saw himself, out by Lake
15 Overholser here in Oklahoma City. Faircroft Farm was
16 his place. He grew alfalfa. And Oklahoma State came
17 down and talked to him about 1950 and said,
18 "Mr. Johnston, if you'll add some nitrogen at this
19 rate to your fertilizer -- to your alfalfa, you'll
20 get a lot better crop. You'll get probably double
21 the crop you've got now. You can probably get two
22 cuttings instead of one." And so my grandfather
23 being no fool figured that if that much was good, if
24 he put on twice as much, he'd get four times as much
25 alfalfa. That didn't work for him. He lost all his

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1 alfalfa.

2 Is that kind of what you're talking about?

3 A. Yes, sir.

4 Q. Is that one of the things that a farmer
5 can benefit from by following a nutrient management
6 plan prepared under the auspices of ODAFF?

7 A. Yes, sir.

8 MR. HAMMONS: Object to the form.

9 A. Yes, sir.

10 Q. (By Mr. Tucker) One of the things that
11 ODAFF does when they instruct farmers on the proper
12 use of organic fertilizers or litter and how to apply
13 it is they put on a slide show for them or a Power
14 Point. Have you seen that Power Point?

15 A. No, sir, I haven't.

16 Q. Well, let me tell you one of the -- one of
17 the training videos -- you know there is a training
18 video though?

19 A. Yes, sir.

20 Q. One of the presentations in the training
21 video, and I'll quote from it, "your AWMP" -- and you
22 know what an AWMP is?

23 A. Yes.

24 Q. What is an AWMP by the way?

25 A. It's a waste management plan.

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1 Q. And what kind of soil testing do they do?
2 I mean what are they testing for?

3 A. M, P and K and trace elements.

4 Q. And is that solely for your-all's
5 management purposes or does that get reported to some
6 agency at the state?

7 A. It's for our management purposes.

8 Q. Okay. So it's not being reported out
9 really?

10 A. No.

11 Q. You had said earlier, I mean a lot
12 earlier, that you wouldn't mind using poultry litter
13 if it was, you know, available and at a decent price?

14 A. And cost effective.

15 Q. Yeah, because you guys are out west.

16 A. Yes.

17 Q. Have you seen any reports or studies on
18 whether poultry litter is considered to be effective
19 for wheat growing?

20 A. Yes.

21 Q. And what's the general tenor of what
22 you've seen?

23 A. It is effective.

24 Q. If litter was available, would you be
25 using it for the wheat or for the pastures or for

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1 both?

2 A. For both.

3 Q. Have you seen any reports that indicate
4 whether or not poultry litter is good for pasture?

5 A. Yes, or I wouldn't use it.

6 Q. Okay. So --

7 A. I just answered that.

8 Q. Okay. All right. So -- so good?

9 A. Yes.

10 Q. All right. Okay. Before you became the
11 head of ODAFF --

12 A. Yes.

13 Q. -- and the Secretary of Agriculture did
14 you know folks who raised cattle over in the IRW?
15 Professionally, socially, whatever.

16 A. I specifically wouldn't know what
17 watershed they lived in, no.

18 Q. Okay. Have you gotten any general
19 impression whether or not the use of poultry litter
20 has improved pasture range over in that part of the
21 state?

22 MR. HAMMONS: Object to the form.

23 A. Yes, it has very much improved range
24 conditions in that watershed.

25 Q. (By Mr. Freeman) Is there any special